IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO. 139 OF 2005

M/S ZUARI INDUSTRIES LTD., ...Petitioner

Versus

M/S HINDUSTAN DORR-OLIVER LTD.AND ANR., ...Respondents

Shri A. Khosla, Senior Advocate with Shri D. Pangam, Advocate for the Petitioners.
Shri V.V. Tulzapurkar, with Shri Ajay Khotlawala and Shri S.S. Khandeparkar, Advocates for the Respondent No.1.
Shri Alok Mahajan with Mr. Ulhas G. Shetye, Advocates for the Respondent No.2.

Coram:- R. M. LODHA, J.

Date:- 29th September, 2005

P.C.:

Mr. Khosla, the learned Senior Counsel for the petitioners prays for withdrawal of this petition with liberty to the petitioners to challenge the impugned order in appeal under Order 43, Rule 1(q) of the Code of Civil Procedure. As a matter of fact, Mr. Tulzapurkar, the learned Counsel for Respondent No.1, raised preliminary objection about the maintainability of the Writ Petition on the ground that the petitioner has efficacious and adequate remedy of appeal under Order 43, Rule 1(q) as in substance the petitioners' application was under Order 38, Rules 1 and 2 of the Code of Civil Procedure.

2. Upon perusal of the application and the grounds set out in the Writ Petition, it clearly appears that the application in fact was made by the petitioners under Order 38, Rules 1 and 2 and the prayer was for direction to the defendants No.1 and 2 to furnish security. In this view of the matter, I am satisfied that the Writ Petition may be permitted to be

withdrawn with liberty to the petitioners to prosecute the remedy of appeal available in accordance with law.

3. Writ Petition is, accordingly, allowed to be withdrawn with liberty as prayed.

R. M. LODHA, J.

sl.